

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 BENJAMIN CLARK
11 February 27, 2018
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: All right. Mr. Clark, if
2 you'll come in and stand next to the witness box
3 right here in front of you. Before you're seated,
4 my courtroom deputy, Ms. Standridge, will swear you
5 in. So if you'll raise your right hand to the best
6 of your ability. Just stand right there and raise
7 your right hand.

8 BENJAMIN CLARK,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:

11 THE CLERK: Please be seated. State and
12 spell your name for the record.

13 THE WITNESS: Benjamin Clark.
14 B-E-N-J-A-M-I-N C-L-A-R-K.

15 THE COURT: All right. Mr. Clark, Mr.
16 Villa.

17 DIRECT EXAMINATION
18 BY MR. VILLA:

19 Q. Good afternoon, Mr. Clark. You have
20 entered into a plea agreement, agreeing to cooperate
21 with the United States; is that right?

22 A. Yes, sir.

23 Q. And you did that back in November of 2016?

24 A. I'm not sure.

25 Q. If you saw your plea agreement, would that

1 refresh your memory?

2 A. Yeah, it would.

3 MR. VILLA: May I approach?

4 THE COURT: You may.

5 Q. Mr. Clark, I'm showing you a copy of your
6 plea agreement, correct?

7 A. Yes, sir.

8 Q. And do you see the date on the top?

9 A. Yes, sir.

10 Q. Does that refresh your memory?

11 A. Yes.

12 Q. And so the plea agreement was entered
13 November of 2016?

14 A. Yes, sir.

15 Q. Now, prior to that time, did you know an
16 individual by the name of Billy Cordova?

17 A. Yes.

18 Q. And did Billy Cordova tell you that he
19 murdered Sammy Chavez?

20 A. He never told me he murdered Sammy Chavez.
21 But he made it seem like he murdered Sammy Chavez.

22 Q. Like he was taking credit for it?

23 A. Like he was taking credit for it, yes.

24 Q. So if he murdered Sammy Chavez, would he
25 be taking credit for something he didn't do?

1 A. I don't know. I can't tell you that.

2 MR. VILLA: May I have just a moment? No
3 future questions.

4 THE COURT: Thank you, Mr. Villa.

5 Do any of the defendants have direct
6 examination of Mr. Clark?

7 MS. DUNCAN: No, Your Honor.

8 THE COURT: All right. Mr. Beck, do you
9 have cross-examination of Mr. Clark?

10 MR. BECK: Yes, Your Honor.

11 MR. VILLA: Your Honor, I think that
12 Mr. Clark's attorney is gesturing to me. He'd like
13 to sit next to his client.

14 THE COURT: Mr. Hosford, if you want to
15 come up and sit, I think there's a chair. I can't
16 see it, but I think there's a chair there that some
17 of the counsel have been seated at, and if you want
18 to be seated there, you're welcome to.

19 MR. HOSFORD: Thank you.

20 THE COURT: Mr. Hosford.

21 BY MR. BECK:

22 Q. Mr. Clark, you're an SNM member, right?

23 A. Yes, sir.

24 Q. You were brought into the gang in 1998?

25 MR. VILLA: Objection, outside the scope.

1 THE COURT: Overruled.

2 A. Yes, sir.

3 Q. And have you ever heard the term "bones"
4 or "huesos"?

5 MR. VILLA: Objection, outside the scope.

6 THE COURT: Overruled.

7 A. Yes, sir.

8 Q. Does that mean how an SNM Gang member
9 earned his membership in the SNM Gang?

10 A. Yes, sir.

11 Q. And you earned your SNM Gang membership,
12 or your bones, by stabbing an SNM member that goes
13 by the name of Junior, right?

14 A. Yes, sir.

15 Q. And who ordered you to stab Junior?

16 MR. VILLA: Objection, Your Honor. I
17 think this calls for hearsay and is outside the
18 scope.

19 MS. DUNCAN: Join, Your Honor.

20 THE COURT: I'm not sure it calls for
21 hearsay, but I am going to sustain the objection
22 because it's outside the scope.

23 BY MR. BECK:

24 Q. Was that an SNM hit?

25 A. Yes, sir.

1 Q. I think you talked about this with Mr.
2 Villa. But you, at one time, were a defendant in
3 this case; isn't that right?

4 A. Yes, sir.

5 Q. And you pleaded guilty, didn't you?

6 A. Yes, sir.

7 MR. BECK: Your Honor, the United States
8 moves to admit what's been marked for identification
9 purposes as Government's Exhibit 785, which is
10 Mr. Clark's plea agreement.

11 THE COURT: Any objection?

12 MR. VILLA: I just need to see the
13 document. I'm just going to hand it to my
14 co-counsel. No objection from Mr. Perez.

15 THE COURT: Any other defendant? Not
16 hearing or seeing any objection, Government's
17 Exhibit 785 will be admitted into evidence.

18 (Government's Exhibit 785 admitted.)

19 BY MR. BECK:

20 Q. And, Mr. Clark, in front of you, I'm about
21 to show you what's been now admitted as Government's
22 Exhibit 785. Is that your plea agreement with the
23 Government?

24 A. Yes, it looks like it, sir.

25 Q. And that was the plea agreement that Mr.

1 Villa referenced with you, that you entered into on
2 November 15, 2016, right?

3 A. Yes, sir.

4 Q. If we turn to page 2 of that document,
5 under paragraph 3 you were charged with and agreed
6 to plead guilty to a charge of violent crimes in aid
7 of racketeering, murder, and aiding and abetting,
8 right?

9 A. Yes, sir.

10 Q. Paragraph 4 tells you that the sentence of
11 imprisonment that the Court may impose is a term of
12 imprisonment for life for that, right?

13 A. Yes, sir.

14 Q. And as you sit here today, you face a term
15 of a life sentence, right?

16 A. Yes, sir.

17 Q. And the crime that you pled guilty to was
18 an SNM murder, right?

19 A. Yes, sir.

20 Q. And it was an SNM murder that happened in
21 the Southern New Mexico Correctional Facility,
22 right?

23 MR. VILLA: Objection, outside the scope.

24 THE COURT: Well, I'll let him explore
25 this plea agreement, and probably that would be

1 about it. Go ahead.

2 BY MR. BECK:

3 A. Yes, sir.

4 Q. And that was a murder in June 2007, right?

5 A. Yes.

6 Q. And that was a murder of another SNM
7 member, Freddie Sanchez; is that right?

8 A. Yes, sir.

9 Q. And Freddie Sanchez was killed by
10 strangulation?

11 MR. VILLA: Objection, outside the scope.

12 THE COURT: Is this in the plea agreement?

13 MR. BECK: Yes.

14 MR. VILLA: Well, Your Honor, can we
15 approach?

16 THE COURT: Well, I'm going to allow a
17 little bit, but I think we're going to have to take
18 this a question at a time.

19 MR. VILLA: I don't think it is in the
20 plea agreement that's being offered into evidence.

21 THE COURT: You can approach if you want,
22 but I think we're going to take these questions one
23 at a time.

24 MR. VILLA: I understand, but I'd still
25 like to make a record.

1 THE COURT: If you want to come up and
2 make a record.

3 (The following proceedings were held at
4 the bench.)

5 MR. VILLA: Judge, the plea agreement that
6 the United States offered redacts the factual basis,
7 and Mr. Beck is asking him about stuff that's in the
8 plea agreement that's been redacted. This is based
9 on the Court's prior ruling. And I understand him
10 exploring what he pled guilty to and what the
11 maximum penalties are, but getting into the factual
12 basis that's been redacted, I think, is out of the
13 bounds.

14 MR. BECK: Your Honor, I'm trying to
15 elicit facts that he pled guilty to.

16 THE COURT: Be very brief about it.

17 MR. BECK: I will.

18 THE COURT: I mean, I'm about done with
19 it. Bring it to an end.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: Mr. Beck.

23 BY MR. BECK:

24 Q. Mr. Clark, when you pled guilty to violent
25 crimes in aid of racketeering, murder, and aiding

1 and abetting, you pled guilty because you passed
2 paperwork on Freddie Sanchez; isn't that right?

3 MR. VILLA: Same objection.

4 THE COURT: Sustained on that question.

5 Q. Don't answer that question, Mr. Clark.

6 Mr. Clark, were you a leader of the SNM
7 Gang, or a shot caller, at one period in time?

8 MS. DUNCAN: Your Honor, objection, beyond
9 the scope.

10 THE COURT: Sustained.

11 BY MR. BECK:

12 Q. And, Mr. Clark, attached to your plea
13 agreement was there an addendum to your plea
14 agreement? Have you ever heard of a -- you've heard
15 of a 5K addendum?

16 A. Yes, sir.

17 Q. Okay.

18 MR. BECK: And the United States moves at
19 this time to admit what's been marked for
20 identification purpose as Government's Exhibit 786,
21 which is the addendum to Mr. Clark's plea agreement.

22 THE COURT: Any objection?

23 MR. VILLA: If I could just see the
24 document. No objection from Mr. Perez.

25 THE COURT: Anybody else?

1 MS. DUNCAN: No objection, Your Honor.

2 THE COURT: All right. Not seeing or
3 hearing any objection, Government's Exhibit 786 will
4 be admitted into evidence.

5 (Government's Exhibit 786 admitted.)

6 BY MR. BECK:

7 Q. And before I show you that, I'm going to
8 go back to Government's Exhibit 785, the actual plea
9 agreement. And this document was filed on November
10 15th of 2016, right?

11 A. Yes, sir.

12 Q. Do you see where it says "Sealed" above
13 "Plea Agreement"?

14 A. Yes, sir.

15 Q. And do you know that means that only the
16 parties to the case, and no one in the public, can
17 see this plea agreement?

18 A. Yes, sir.

19 Q. Do you know that your attorneys asked for
20 this to be sealed?

21 MS. DUNCAN: Your Honor, I'm going to
22 object on the grounds of relevance and hearsay.

23 THE COURT: Well, overruled.

24 BY MR. BECK:

25 A. Yes, sir.

1 Q. Now, I'm going to go to Government's
2 Exhibit 786. And you've seen this document before,
3 Mr. Clark?

4 A. Yes, sir.

5 Q. And on page 2 of that document, that
6 document also is dated November 15, 2016, right?

7 A. Yes, sir.

8 Q. And that second signature above where it
9 says "Benjamin Clark a/k/a Cyclone," that's your
10 signature, right?

11 A. Yes, sir.

12 Q. And is Cyclone the name that you went by
13 in the SNM Gang?

14 A. Yes, sir.

15 Q. All right. And does this document
16 indicate that you agreed to cooperate with the
17 Government and, if asked, to testify in this case?

18 A. Yes, sir.

19 Q. And does it also state that you understand
20 that you have to testify truthfully, to comply with
21 this agreement?

22 A. Yes, sir.

23 Q. And that you can't exaggerate the
24 involvement of any person in a crime?

25 A. Yes, sir.

1 Q. And you can't falsely minimize the
2 involvement of any person in a crime, right?

3 A. Yes, sir.

4 Q. And does this document also say that if
5 you comply with your obligation to cooperate, the
6 United States Attorney may file what we've called a
7 5K motion?

8 A. Yes, sir.

9 Q. And then does it say that the acceptance
10 of that, and your eventual sentence, is determined
11 solely within the discretion of the Court?

12 A. Yes, sir.

13 Q. And is that Court Judge Browning?

14 A. I believe so.

15 Q. And earlier, when Mr. Villa asked you, Mr.
16 Cordova never told you that he killed Sammy Chavez,
17 right?

18 A. No, he never flat-out said, "I killed
19 Sammy Chavez."

20 Q. Okay. And do you know he was in prison at
21 the time that that murder took place?

22 A. I don't know. I couldn't say.

23 MR. BECK: Nothing further, Your Honor.

24 THE COURT: Thank you, Mr. Beck.

25 Any redirect, Mr. Villa?

1 MR. VILLA: Yes, Your Honor.

2 THE COURT: Mr. Villa.

3 REDIRECT EXAMINATION

4 BY MR. VILLA:

5 Q. Mr. Clark, so if I understand your
6 testimony, Mr. Cordova never flat-out said that he
7 killed Sammy Chavez, but he was trying to make you
8 believe that he did that?

9 A. Yes, sir.

10 Q. And pursuant to your agreement that the
11 Government showed you, this testimony you're giving
12 today is truthful, right?

13 A. Yes, sir.

14 Q. And you're not exaggerating?

15 A. No, sir.

16 Q. And when you're testifying that Billy
17 Cordova made you believe he killed Sammy Chavez,
18 you're not trying to minimize his role or inflate
19 his role, are you?

20 MR. BECK: Objection, Your Honor. That
21 misstates the testimony.

22 THE COURT: Well, I'll let you recross if
23 you want.

24 BY MR. VILLA:

25 Q. Mr. Cordova's role, you're not trying to

1 minimize it or increase the role in your testimony
2 here today?

3 MR. BECK: Objection, Your Honor, compound
4 question.

5 THE COURT: Overruled.

6 Q. You can answer.

7 A. No.

8 Q. So Mr. Beck asked you if Mr. Cordova was
9 in custody at the time Sammy Chavez was killed. If
10 that were true -- and I know you don't know if it's
11 true -- but if that were true, when Mr. Cordova
12 tried to make you believe that he killed Sammy
13 Chavez, Mr. Cordova was not being honest with you,
14 was he?

15 A. If that was true.

16 MR. VILLA: That's all the questions I
17 have.

18 THE COURT: Thank you, Mr. Villa.

19 Any other defendants have redirect?

20 MS. DUNCAN: No, Your Honor.

21 THE COURT: All right. Mr. Beck, do you
22 have anything further?

23 MR. BECK: No, Your Honor.

24 THE COURT: All right. Mr. Clark, you may
25 step down. Is there any reason Mr. Clark cannot be

1 excused from the proceedings?

2 MS. DUNCAN: No, Your Honor.

3 THE COURT: How about you, Mr. Beck? Can
4 he be excused?

5 MR. BECK: No, Your Honor, he can be
6 excused.

7 THE COURT: All right. Not hearing any
8 objection, Mr. Clark, you're excused from the
9 proceedings. Thank you for your testimony.

10 THE WITNESS: Thank you.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

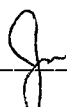
MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 UNITED STATES OF AMERICA
2 STATE OF NEW MEXICO
3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 22nd day of March, 2018.
13

14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/18
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com